

1 BINGHAM McCUTCHEN LLP  
2 William Bates III (SBN 63317)  
bill.bates@bingham.com  
3 Christopher M. O'Connor (SBN 229576)  
christopher.oconnor@bingham.com  
4 Sarah L. Bishop (SBN 258051)  
1117 S. California Avenue  
Palo Alto, CA 94304-1106  
5 T: 650.849.4400 F: 650.849.4800

6 Attorneys for Plaintiff WASHINGTON C. MONTANO

7 KAMALA D. HARRIS  
8 Attorney General of California  
TYLER B. PON  
9 Supervising Deputy Attorney General  
WILFRED FONG (SBN 154303)  
Deputy Attorney General  
10 JEFFREY R. VINCENT (SBN 161013)  
Deputy Attorney General  
jeffrey.vincent@doj.ca.gov  
11 1515 Clay Street, 20th Floor  
12 P.O. Box 70550  
Oakland, CA 94612-0550  
13 T: 510.622.2127 F: 510.622.2270

14 Attorneys for Defendant CESAR L. SINNACO, M.D.

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 OAKLAND DIVISION

18 **WASHINGTON C. MONTANO,**

19 No. 5:04-cv-00543-CW

20 Plaintiff,

**STIPULATION AND [PROPOSED]  
ORDER TO VACATE TRIAL DATE  
IN LIGHT OF TENTATIVE  
SETTLEMENT AGREEMENT**

21 v.

22 **CESAR L. SINNACO, M.D.,**

Judge: Hon. Claudia Wilken  
Ctrm: 2

23 Defendant.

24 Action Filed: Feb. 9, 2004  
Trial: December 9, 2011

1 By and through this Stipulation, Plaintiff Washington C. Montano and Defendant Cesar  
2 L. Sinnaco (together "the Parties") through their counsel of record, pursuant to Local Rules 7-12  
3 and 40-1 stipulate to a request to vacate the trial dates currently on calendar, subject to Court  
4 approval.

5 WHEREAS trial in this matter is set to begin on Friday December 9, 2011;

6 WHEREAS the Parties have engaged in settlement discussions throughout the litigation  
7 of this case, including two settlement conferences with Magistrate Judge Vadas;

8 WHEREAS the Parties reached a tentative settlement agreement that contemplates  
9 payment of monetary consideration and the occurrence of an independent medical evaluation and  
10 any recommended treatment of Plaintiff's left foot and ankle by an orthopedic surgeon;

11 WHEREAS the Parties need time to finalize and translate the written settlement  
12 agreement, including identification of the orthopedic surgeon and scheduling of the appointment;

13 WHEREAS counsel will also need time to obtain their clients' signatures on the final  
14 settlement agreement, including time required to obtain Plaintiff's signature either by mail or in  
15 person after scheduling a legal visit to the prison;

16 WHEREAS when the parties consummate the settlement agreement, trial will be moot,  
17 and the Parties do not wish to burden the Court with unnecessary work or needlessly expend the  
18 Parties' resources on a trial;

19 NOW, THEREFORE, the Parties stipulate that:

20 (a) the trial date in this case and any and all related deadlines on calendar shall be vacated  
21 pending consummation of the settlement agreement and the filing of a dismissal of this action;  
22 and

23 [Remainder of Page Intentionally Left Blank]

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1                             (b) a status conference be set in or about February 2012, to be held in the event that no  
2 final settlement could be reached.

3  
4 DATED: December 6, 2011

ATTORNEY GENERAL OF CALIFORNIA

5  
6 By: \_\_\_\_\_ /s/ Jeffrey Vincent  
7                             Jeff. R. Vincent  
8                             Attorneys for Defendant

9 I, Christopher M. O'Connor, declare, under penalty of perjury under the laws of the  
10 United States of America, that Deputy Attorney General Jeffrey Vincent has concurred in the  
11 filing of this document.

Dated: June 10, 2011

BINGHAM McCUTCHEN LLP

12 By: \_\_\_\_\_ /s/ Christopher M. O'Connor  
13                             Christopher M. O'Connor  
14                             Attorneys for Plaintiff Washington C. Montano

15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16 DATED: \_\_\_\_\_ December 7, 2011

17  
18 By: \_\_\_\_\_   
19                             Hon. Claudia Wilken  
20                             United States District Judge